

EPA/Jersey Medical Center

April 29, 04

Name	Org	Telephone
Any Chester	EPA - ORC	212 637- 3213
Tim Woodward	Jersey City Medical CTR	201-915 - 0540
Jr HOBLE	JCAL	901-915 - 2207
Michael Curci	Jersey City Medical Ctr	201 915 2062
Rita Smith	Jersey City Med Center	201 915 2576
Joel Golambek	EPA - RCB	
MARIANNA DOMINGUEZ	EPA - RCB	(212) 637- 4114.



Health

ENVIRONMENTAL PROTECTION
AGENCY, REGION II

2004 JUL 12 PM 3:31

RCRA COMP. BR.

July 2, 2004

Marianna Dominguez ✓
RCRA Compliance Branch
DECA

U.S. Environmental Protection Agency – Region 2
290 Broadway, 22nd Floor
New York, New York 10007-1866

Amy Chester
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Dear Sir or Madam:

Attached is the signed Consent Agreement and Final Order Docket No. RCRA-02-2004-7107 and copy of the payment instrument.

If you have any questions, please do not hesitate to contact me at 201-915-2207.
Thank you.

Sincerely,

James B. Hogle, III
Vice President facilities & Construction

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Jersey City Medical Center
50 Baldwin Avenue
Jersey City, NJ 07304

Respondent.

Proceeding Under Sections 3008 of the Solid
Waste Disposal Act, as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA - 02-2004-7107

PRELIMINARY STATEMENT

This civil administrative proceeding was instituted pursuant to Sections 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 United States Code (U.S.C.) §§ 6901-6991 (together hereafter the "Act" or "RCRA").

The Complainant in this proceeding, Dore LaPosta, the Director of the Division of Enforcement and Compliance Assistance, Region 2 EPA, has been duly delegated the authority to institute and carry forward this proceeding.

The Respondent is the Jersey City Medical Center ("JCMC" or "Respondent"). The JCMC facility was located at or near 50 Baldwin Avenue, Jersey City, New Jersey 07304 during the time periods referenced herein.

Pursuant to Section 3006(b) of the Act, 42 U.S.C. § 6926(b), the State of New Jersey was

authorized by EPA to conduct a hazardous waste program (the "authorized State Program"). 64 Fed. Reg. 41823 (Aug. 2, 1999). There were later changes in the scope of the authorized State Program as a result of EPA's authorization of New Jersey's regulations incorporating by reference changes to the federal program promulgated by EPA between July 2, 1993 and July 31, 1998. 67 Fed. Reg. 76995 (Dec. 16, 2002). These changes became effective February 14, 2003. Prior to February 14, 2003, the authorized State Program incorporated by reference, with some modifications, the regulations in the federal program at 40 Code of Federal Regulations (C.F.R.) Parts 124, 260-266, 268 and 270 as set forth in the 1993 edition. As of February 14, 2003, the authorized State Program, with some modifications, essentially incorporates by reference the regulations in the 1998 edition of the same Parts of Title 40 of the C.F.R.. New Jersey's authorized regulations comprising the original State Program, authorized in 1999, can be found in the New Jersey Register. See 28 N.J.R. 4606 (Oct. 21, 1996). The New Jersey regulations authorized in 2002 can be found at 31 N.J.R. 166 (Jan. 19, 1999). New Jersey is not authorized for any HSWA regulations adopted by EPA after July 31, 1998. EPA is authorized to enforce the provisions of the authorized State Program. Consequently, EPA has retained its authority to enforce the New Jersey regulations comprising the authorized State Program. EPA retains primary responsibility for requirements promulgated pursuant to HSWA since July 31, 1998.

New Jersey's authorized hazardous waste program incorporates by reference, with some minor modifications, the federal program set forth in 40 C.F.R. Parts 124, 260-266, 268 and 270. (Citations to the authorized State Program below will cite the applicable regulation of the federal program incorporated by reference, followed by the New Jersey regulation which incorporated said federal regulation by reference. All federal regulatory references are to the 1993 edition of

the C.F.R. unless otherwise noted.)

The Complainant issued a Complaint, Compliance Order and Notice of Opportunity for Hearing (the "Complaint") to Respondent on or about March 30, 2004. The Complaint alleges that Respondent violated specific provisions of RCRA and the New Jersey and/or federal regulations concerning the management of hazardous waste. Complainant and Respondent conducted settlement negotiations which led to this agreement.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. JCMC is a "person," as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 (1993), as incorporated by reference by the New Jersey Administrative Code ("NJAC") 7:26G-4.1(a).
2. Respondent has informed EPA that the city of Jersey City is the "owner" of the facility as that term is defined in 40 C.F.R. § 260.10 (1993), as incorporated by reference by NJAC 7:26G-4.1(a).
3. JCMC is the "operator" of the facility as that term is defined in 40 C.F.R. § 260.10 (1993), as incorporated by reference by NJAC 7:26G-4.1(a).
4. In or about December 1995, JCMC notified EPA that it generates hazardous waste at its facility. In or about May 1996, JCMC submitted a subsequent notification to EPA stating that it generates listed and characteristic hazardous waste at its facility.

5. In or about January 1996, EPA issued JCMC EPA Identification Number NJR000008995 for its facility.
6. JCMC is a "hazardous waste" "generator" as those terms are defined in 40 C.F.R. § 260.10 (1993), as incorporated by reference by NJAC 7:26G-4.1(a).
7. As of at least April 2003, JCMC had not determined if certain materials generated at its facility constituted a hazardous waste.
8. JCMC's failure to determine if each solid waste generated at its facility constituted a hazardous waste is a violation of 40 C.F.R. § 262.11(1993), as incorporated by reference by NJAC 7:26G-6.1(a).
9. From at least January 1, 2000 to April 1, 2003, JCMC sent shipments of chemotherapy (Cyclophosphamide and Mitomycin) hazardous waste, U010 and U058 respectively, to an off-site treatment or disposal facility to be incinerated as medical waste.
10. From at least January 1, 2000 to April 1, 2003, JCMC did not prepare hazardous waste manifests for any of the shipments of U010 and U058 hazardous waste sent off-site to the treatment or disposal facility.
11. As of at least April 2003, JCMC had not sent any land ban notification(s) to the treatment or disposal facility receiving Respondent's U010 and U058 hazardous waste. Land ban notifications must set forth the generator's determination regarding whether the shipped hazardous waste meets appropriate treatment standards. Additionally, JCMC had not maintained a copy of the requisite notification(s) at its facility.
12. Respondent's failure to prepare hazardous waste manifests for each shipment of U010 and U058 hazardous waste sent off-site, as referenced in paragraph 10, is a violation of

40 C.F.R. § 262.20(a) (1993), as incorporated by reference by NJAC 7:26G-6.1(a).

13. Respondent's failure to send the requisite land ban notification(s), and keep such notifications on file at its facility, as referenced in paragraph 11, constitutes violations of 40 C.F.R. § 268.7(a).

CONSENT AGREEMENT

Based on the foregoing, and pursuant to Sections 3008 of RCRA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. § 22.18 (2003), it is hereby agreed by and between the parties and JCMC knowingly and voluntarily agrees as follows:

1. Within twenty days of the effective date of this Compliance Order, JCMC shall:
 - a. make hazardous waste determinations regarding all solid waste generated at the facility pursuant to 40 C.F.R. § 262.11, as incorporated by reference by NJAC 7:26G-6.1(a);
 - b. prepare a hazardous waste manifest for each shipment of hazardous waste sent off-site to a treatment, storage, or disposal facility pursuant to 40 C.F.R. § 262.20(a), as incorporated by reference by NJAC 7:26G-6.1(a)-(c);
 - c. prepare and send requisite land ban notification(s) for each hazardous waste sent off-site to a treatment, storage or disposal facility pursuant to 40 C.F.R. § 268.7; and
 - d. otherwise comply with all applicable provisions for generators set forth or cross-referenced in 40 C.F.R. Part 262, as incorporated by reference by NJAC 7:26G-6.1(a).
2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of the Complaint as applied to its facility and neither admit nor deny specific factual allegations

contained in the Complaint.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **twenty five thousand dollars (\$25,000.00)**. The check shall be payable to the "Treasurer, United States of America." The case name and the docket number for this matter shall be referenced on the face of the check.

Such check shall be mailed to:

**EPA Region 2 (Regional Hearing Clerk)
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251**

Respondent shall also send a copy of the payment instrument to each of the following:

Marianna Dominguez
RCRA Compliance Branch
DECA
U.S. Environmental Protection Agency-Region 2
290 Broadway, 22nd Floor
New York, New York 10007-1866

Amy Chester
Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel
U.S. Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Payment must be **received** at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which

payment must be received shall hereinafter be referred to as the "due date").

- a. Failure to pay the civil penalty in full by the due date will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due date.
 - c. Payment of the penalty amount and compliance with the tasks and terms of this CA/FO are in full settlement of all civil liabilities that might have attached as a result of the allegations in the civil administrative Complaint brought against Respondent in this case, **Docket No. RCRA-02-2004-7107**.
 - d. The civil penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state or local law.
4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint. Respondent has read the Consent Agreement,

understands its terms, finds it to be reasonable and consents to its issuance and its terms.

Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all settlement terms are set forth herein. Respondent explicitly and knowingly consents to the assessment of the civil penalty that comes due as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

5. Respondent explicitly waives its rights to request or to seek a Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement, or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
6. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
7. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Act and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
8. Nothing in this CA/FO shall be deemed to limit EPA's authority to perform inspections or initiate appropriate actions pursuant to any of its statutory or regulatory authorities.
9. Each party shall bear its own costs and fees in this matter.

10. Respondent certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon Respondent, its officials including staff, authorized representatives and successors or assigns.
11. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:
Jersey City Medical Center

BY: JAMES B. HOGUE III / James B. Hogue III

NAME: JAMES B. HOGUE III

TITLE: VP OF FACILITIES & CONSTRUCTION

DATE: 7/2/04

COMPLAINANT:

United States Environmental Protection
Agency - Region 2

BY: _____

TITLE: Dore LaPosta, Director
Division of Enforcement &
Compliance Assistance

DATE: _____

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order pursuant to Section 3008 of the Act and 40

C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

Jane M. Kenny
Regional Administrator
EPA-Region 2

DATE: _____

Liberty Healthcare System, Inc.
JERSEY CITY MEDICAL CENTER
 50 BALDWIN AVENUE
 JERSEY CITY, NJ 07304

The Trust Company of New Jersey
 Jersey City, N.J.

PAY: TWENTY FIVE THOUSAND AND 00/100 DOLLARS

ISSUE DATE	CHECK NUMBER	AMOUNT
07/02/04	110T1847	*****25,000.00

VOID IF NOT CASHED WITHIN 90 DAYS

PAY
 TO THE
 ORDER
 OF

TREASURER, UNITED STATES OF AMERICA
 EPA REGION 2 (R.H. CLERK)
 PO BOX 360188M
 PITTSBURGH PA 15251

IF CHECK AMOUNT IS OVER \$10,000.00 THEN SECOND SIGNATURE IS REQUIRED

Stephen Kelly
 AUTHORIZED SIGNATURE

⑈ 11011847 ⑈ ⑈ 021200407⑈ 104 01 3232 6⑈

DETACH HERE FOR YOUR RECORDS
 NO. 11011847

TREASURER, UNITED STATES OF AMERICA EPA REGION 2 (R.H. CLERK)

PO BOX 360188M

DATE	INVOICE NUMBER	COMMENT	AMOUNT	DISCOUNT	NET AMOUNT
05/05/04	DISPOSAL CHG	CR12485	25,000.00	0.00	25,000.00
CHECK DATE	07/02/04	CHECK NUMBER	11011847	TOTAL	*****25,000.00

JERSEY CITY MEDICAL CENTER

50 BALDWIN AVENUE

JERSEY CITY, NJ 07304

DETACH HERE FOR YOUR RECORDS
 NO. 11011847

TREASURER, UNITED STATES OF AMERICA EPA REGION 2 (R.H. CLERK)

PO BOX 360188M

DATE	INVOICE NUMBER	COMMENT	AMOUNT	DISCOUNT	NET AMOUNT
05/05/04	DISPOSAL CHG <i>RE</i>	CR12485	25,000.00	0.00	25,000.00
CHECK DATE	07/02/04	CHECK NUMBER	11011847	TOTAL	*****25,000.00

JERSEY CITY MEDICAL CENTER

50 BALDWIN AVENUE

JERSEY CITY, NJ 07304